

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JIMMIE HARDAWAY, JR., LARRY A. BOYD,
FIREARMS POLICY COALITION, INC., and
SECOND AMENDMENT FOUNDATION,

Plaintiffs,

v.

AFFIDAVIT IN RESPONSE TO
PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

KEVIN P. BRUEN, in his official capacity as
Superintendent of the New York State Police,
BRIAN D. SEAMAN, in his official capacity
as District Attorney for the County of Niagara,
New York, and JOHN J. FLYNN, in his offi-
cial capacity as District Attorney for the County
of Erie, New York,

Case #: 1:22-cv-00771-JLS

Defendants.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

JOHN J. FLYNN, being duly sworn, deposes and says:

1. I, in my official capacity as District Attorney for the County of Erie, New York have been named as a defendant in the above-entitled action. As per the Notice of Limited and Special Appearance filed by my attorney, Erie County Attorney Jeremy C. Toth (Assistant Erie County Attorney Kenneth R. Kirby, of Counsel), because I have not, yet, been (properly) served with the summons and a copy of the complaint, I appear for the limited and special appearance of apprising the Court of my position relative to this litigation challenging the constitutionality of New York State's recently enacted gun control legislation.

2. I make this Affidavit in response to the plaintiffs' motion for a preliminary

injunction/temporary restraining order restraining or enjoining the defendants, including me in my official capacity, from enforcing New York State's recently enacted gun control legislation.

3. As the District Attorney for the County of Erie, New York, I am sworn to enforce the (criminal) laws of the State of New York, including but not limited to the provisions of New York State's recently enacted gun control legislation.

4. I note, however, that to the best of my knowledge, to date I have received no referrals from any police agency(ies) or other persons requesting that I prosecute anyone for violation of any of the provisions of New York State's recently enacted gun control legislation.

5. Because the recently enacted gun control legislation which the plaintiffs challenge as unconstitutional is a creature of New York State law, I respectfully leave to the State-related co-defendant the defense of the said legislation from the plaintiffs' said challenge.

Subscribed and sworn to before me this 18th day of
October, 2022 by Erie County District Attorney
John J. Flynn, by me known and to me known to
be the same.

s/ John Flynn
JOHN J. FLYNN
District Attorney for the County of
Erie, New York

s/ Sylvia Collins
NOTARY PUBLIC – STATE OF NEW YORK
Notary Public State of New York
Lic #01CO6258493
My Commission Expires on 03/26/2024

CERTIFICATE OF SERVICE

I, Kenneth R. Kirby, hereby certify that on the 19th day of October, 2022 before 4:00 p.m., I served the foregoing, as well as John J. Flynn's Affidavit in Response to Plaintiffs' Motion for a Preliminary Injunction/Temporary Restraining Order, upon the following Plaintiffs' counsel via the Court's EM/CMF electronic filing/service system:

PHILLIPS LYTLE LLP

Nicolas J. Rotsko, Esq.

Attorneys for Plaintiffs

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Dated: Buffalo, New York

October 19, 2022

Yours, etc.,

JEREMY C. TOTH, ESQ.

Attorney appearing specially and for limited purpose only for JOHN J. FLYNN, in his official capacity as District Attorney for the County of Erie, New York

By: s/Kenneth R. Kirby, Esq.

KENNETH R. KIRBY, ESQ.

Ass't. Erie Co. Att'y.

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